

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND
COMPOUNDING PHARMACY, INC.
PRODUCTS LIABILITY LITIGATION

MDL No. 1:13-md-2419-FDS

This Document Relates To:

All Actions

MDL Order No. 7
September 18, 2013

FURTHER CASE MANAGEMENT ORDER

This order establishes further case management procedures in *In re New England Compounding Pharmacy, Inc., Products Liability Litigation*, MDL No. 1:13-md-2419-FDS (“the MDL”). This order modifies or establishes certain deadlines for discovery and certain other events, and is based in part on the stipulation and proposed order submitted by the Plaintiffs’ Steering Committee (“PSC”) and the Affiliated Defendants. The Court has also considered oppositions to the proposed order submitted by defendants ARL BioPharma, Inc.; Saint Thomas Outpatient Neurological Center, LLC, et al.; and Insight Imaging, Inc.

- 1. Definitions.** For purposes of this order, (a) the term “NECC” shall mean New England Compounding Pharmacy, Inc.; (b) the term “Affiliated Defendants” shall mean Barry Cadden; Lisa Cadden; Doug Conigliaro; Carla Conigliaro; Gregory Conigliaro; Glenn Chin; Alaunus Pharmaceutical, LLC; Ameridose, LLC; GDC Properties Management, Inc; Medical Sales Management; and Medical Sales Management SW; (c) the term “Unaffiliated Defendants” shall mean all

defendants other than NECC or the Affiliated Defendants; and (d) the term “Bellwether Cases” shall mean the first individual cases selected for trial.

- 2. Other Dispositive Motions.** This order does not provide a timetable for the filing and resolution of motions to dismiss by the Unaffiliated Defendants, other than (a) the filing of such motions in cases from certain states with relatively short limitations periods or filing requirements and (b) the filing of motions to dismiss in response to the filing of the Master Complaint and any related Short Form Complaints. Likewise, this order does not provide a timetable for the filing and resolution of any motions for judgment on the pleadings or summary judgment by any party. The Court recognizes that any Unaffiliated Defendant should have a reasonable opportunity to seek dismissal without undue delay, and expects to set a schedule for such motion practice at a future date.
- 3. Discovery from NECC and Affiliated Defendants.** This order does not provide for discovery from NECC, which remains subject to the protections of the Bankruptcy Court, or the Affiliated Defendants. The Court recognizes that fairness requires that discovery be mutual and reciprocal, and expects to set a schedule for such discovery at a future date.
- 4. Participants in Mediation Program.** The Court’s Order on Mediation Program of August 15, 2013, exempts participating defendants from various discovery obligations. In order to ensure that the litigation process is fair should attempts at mediation prove unsuccessful, the Court may find it appropriate to modify the deadlines in this order, grant additional stays, or take such other action as justice

may require.

- 5. Expert Discovery and Completion of Fact Discovery.** The Court will set deadlines for expert discovery and completion of fact discovery at a future date.

- 5. Schedule.** The Court hereby sets the following schedule for discovery and certain other events in this matter:

Event	Dates/Deadline
Fact discovery of (1) NECC and (2) the Affiliated Defendants.	Stayed until further order of the Court.
Fact discovery of (1) the Unaffiliated Defendants, (2) non-parties, and (3) plaintiffs.	Such discovery may begin forthwith, subject to the Mediation Order of August 15, 2013, as it may apply as to any participating defendant.
Filing of answers, motions to dismiss, or other responsive pleadings by (1) NECC and (2) the Affiliated Defendants.	Stayed until further order of the Court.
Filing of answers, motions to dismiss, or other responsive pleadings by the Unaffiliated Defendants in cases from Alabama, Kentucky, Louisiana, Nevada, Ohio, or Tennessee (that is, jurisdictions with one-year limitations periods or other one-year defenses or requirements as to certain claims), whether directly filed or transferred into the MDL proceeding; provided, however, that no memorandum in support of a motion to dismiss need be filed until the Court has set a briefing schedule for that motion.	October 9, 2013, or the date provided by the Federal Rules of Civil Procedure, whichever is later.
Filing of answers, motions to dismiss, or other responsive pleadings by the Unaffiliated Defendants in cases from other states.	Stayed until further order of the Court.

Filing of responses by plaintiffs or other parties to motions to dismiss.	Stayed until further order of the Court.
Filing of Master Complaint and form of Short Form Complaint by PSC.	November 5, 2013
Filing of Short Form Complaint joining the Master Complaint by any individual plaintiff in (1) any previously filed case and (2) any case where the plaintiff wishes to be considered for selection as a Bellwether Case.	November 29, 2013
Filing of Master Answers, Motions to Dismiss the Master Complaint, or other pleadings responsive to the Master Complaint by (1) NECC and (2) the Affiliated Defendants.	Stayed until further order of the Court.
Filing of Master Answers, Motions to Dismiss the Master Complaint, or other pleadings responsive to the Master Complaint by the Unaffiliated Defendants.	December 2, 2013
Completion by plaintiffs of Plaintiff Profile Form for any case where the plaintiff wishes to be considered for selection as a Bellwether Case.	January 3, 2014
Selection of six potential Bellwether Cases.	January 24, 2014

So Ordered.

/s/ F. Dennis Saylor
F. Dennis Saylor IV
United States District Judge

Dated: September 18, 2013